direction encroached onto his path and collided into him. As a result of the accident he suffered serious injuries and had commenced legal proceedings through his solicitors against the rider of the motorcycle for damages.

His solicitors applied to the Ketua Polis Daerah, Butterworth, for "all the police reports, sketch-plan and key and photographs taken in connection with the aforesaid accident" and the Ketua Polis Daerah, Butterworth, supplied them with all the relevant documents except the police report made by the rider of motorcycle No. KH 8909 which had collided into the applicant. To subsequent requests by the applicant's solicitor for a copy of the said report the Ketua Polis Daerah, Butterworth, replied that he could not supply the report because the maker of that report was not a client of the applicant's solicitor. The applicant now comes to court for an order to compel the Ketua Polis Daerah, Butterworth, to supply him with the said report as he requires it to process his claim for damages against the rider of motorcycle No. KH 8909.

At the outset, counsel for respondent conceded that the police report concerned was a public document.

The question of accessibility of third parties to police reports not made by them was considered in depth by the Federal Court in the case of *Anthony Gomez* v. *Ketua Polis Daerah, Kuantan.*[1] The arguments were considered in full in that case and it would be superfluous for me to repeat them in this judgment. Suffice it to quote Suffian L.P., in delivering the judgment of the court, when he said:

"From the above we would deduce the law to be as follows: though our section 76 (of the Evidence Act) is silent as to the right of the applicant to inspect the first information report in question, it is clear that under the common law he has that right, as he is a person interested in it and inspection is necessary for the protection of his interest. This first information report is admissible in evidence in the criminal trial against him under section 157 of the Evidence Act and therefore the applicant or his counsel should be supplied a copy.

If a certified copy of the first information report in question is supplied to the applicant, it is admissible in evidence under section 77 of the Evidence Act. What was then the point of adding section 108A Criminal Procedure Code in 1936? The learned judge who considered this action thought that the point was that the legislature had never intended that a person such as the applicant should have a right of inspection under section 76 of the Evidence Act.

With respect it would appear to us that in 1936 the legislature overlooked the fact that under the common law such a person already had that right, as was declared as long ago as in the year 1888 in *Mutter* (*Mutter* v. *Eastern and Midlands Railways Co.* L.R. 38 Ch. D. 92)."

Anthony Gomez' case was one where he was charged with the offence of criminal intimidation of one V. Bernard Vas under section 506 of the Penal Code and suspecting that the charge was based on a report by the said V. Bernard Vas, his solicitor wrote to the police for a copy of the report Bernard Vas made to the police under section 107 of the Criminal Procedure Code. The police refused and hence his application to court.

The respondents in the case before the court are of the view that *Anthony Gomez'* case has no relevance here as the applicant is seeking a police report made by another person for the purpose of civil proceedings, and not for the purpose of defending himself in criminal proceedings. This notion is completely devoid of merit.

As Suffian L.P., said in the *Anthony Gomez'* case,

"In our judgment the applicant *has* a right to inspect the first information report and therefore the O.C.P.D. should have given him a certified true copy. The applicant has a right to inspect the first information report under the common law because of his interest in it."

The operative words are "because of his interest in it." "His interest" is not qualified or limited to matters where he is involved in criminal prosecution. He has just as much interest in police reports made by third parties which may be defamatory, false or imputing negligence on the highway, lack of due care and consideration, breach of statutory duty, etc., etc. And a person who seeks to establish negligence on the part of someone who collided into him has a legitimate interest in knowing what the other person's version of the accident as given in his police report is.

In *Earl Jowitt's* Dictionary of English Law, a public document is defined as "a document made for the purpose of the public making use of it." And that is exactly what police reports under section 107 of the Criminal Procedure Code are. If the right of the public to have access to public documents is to be limited or curtailed, then the legislature would have expressly so stated or it must be established that it is contrary to public interest. In the absence of such limitations, public documents must be treated as "public documents."

In the reasons stated above the application was allowed with costs.

Application allowed.

Solicitors: *V. Muthusamy & Co.*

CHAN KIM HEE v. KARAM SINGH & ANOR.

[O.C.J. (Yusof Abdul Rashid J.) October 20, 1980]
[Johore Bahru — Civil Suit No. 360 of 1975]

Damages — Quantum — 3 cm. leg-shortening and compound fracture of tibia and fibula.

Road Traffic — Duty of motorist when turning across line of oncoming traffic.

The plaintiff in this case sought for damages arising out of a road accident as a result of the negligence of the first defendant who was a servant of the second defendant. At the material time of the accident, the motor lorry driven by the second defendant was making a right turn into a junction leading towards a side road. The plaintiff suffered the following injuries: (1) a compound fracture at the lower end of the tibia and fibula with a lacerated wound at the site of fracture. A piece of bone protruded through the wound (4" long); (2) superficial abrasions over the knees (both right and left) and over the middle 3 knuckles of the left hand and over the (R) and (L) shoulder regions; (3) 3 cm. shortening of the right leg.

The plaintiff was a chief clerk and earned a salary of $310 plus $150 fixed allowance per month. He was given 6 months medical leave. At the time of the trial he was 43 years old. He walked with a limp as his right leg could not support the whole body.

Held: (1) the first defendant had turned "across the line of oncoming traffic" when he suddenly turned intending to go into a minor road and he failed to give any "conventional signal to deviate from" his course. He was therefore wholly to blame for the collision;

(2) general damages was assessed at $5,000 for loss of amenities and $20,000 for 3 cm. shortening of the right leg.

[**Editorial Note:** The learned Judge allowed transport expenses incurred by the members of the plaintiff's family during their regular visits to see him in the hospital. Cf. Singapore case of *Lian Chi Kay* v. *Lee Kuo Shin* [1981] 2 M.L.J. 167.]

Case referred to:-

(1) *Tan Kheng Kuan* v. *Lim Chen Teik* [1965] 1 M.L.J. 116, 117.

CIVIL SUIT.

Irene Goh (*Miss*) for the plaintiff.

C. Paramjothy for the defendants.

Yusof Abdul Rashid J.: The plaintiff brought this action against the defendants for damages arising out of a road accident in consequence of which the plaintiff suffered personal injuries and loss due to the negligence of the first defendant who was a servant or agent of the second defendant.

It was common ground that an accident occurred on June 18, 1972 along Jalan Buloh Kasap at the junction of Kampong Jabi involving the plaintiff who was riding motorcycle No. JG 4335 along Jalan Buloh Kasap travelling towards the direction of Segamat and the first defendant who was driving motor lorry No. JG 4958 as the servant or agent of the second defendant. As a result of the said accident, the plaintiff suffered pain and injury, loss and damages. At the material time of the accident, motor lorry No. JG 4958 driven by the second defendant was making a right turn into a junction leading towards Kampong Jabi.

In evidence the plaintiff testified that about 9.00 a.m. on the material date, he was riding his motorcycle from the direction of Buloh Kasap towards Segamat. When he was approaching a junction where a side-road leading towards Kampong Jabi joined the Buloh Kasap/Segamat Road which was the main road, a motor lorry which was travelling from the direction of Segamat towards Buloh Kasap without any indication suddenly turned into the said side road. The plaintiff could not take any evasive action and a collision occurred between his motorcycle and the lorry.

The defendants adduced no evidence to contradict the plaintiff. In cross-examination, however, it was put to the plaintiff, who denied it, that the driver of the lorry had put on the indicator to turn into the side road and that the plaintiff failed to notice the signal. The court had no reason to doubt the plaintiff's version that the lorry driver without any indication at all suddenly turned to go into the side road. Under such circumstances the court found that the first defendant was wholly to blame for the collision.

At this juncture it is pertinent to state the observations of Hepworth J. relating to the duty of a driver in turning a vehicle across the general route of traffic in the case of *Tan Kheng Kuan* v. *Lim Chen Teik*[1] —

"...It is a grave fault in motor driving to turn a vehicle across the general route of traffic without first seeing that there is a clear passage available. *The act of turning across the line of oncoming traffic is one which imposes a special duty of care which is not necessarily discharged by giving the conventional signal to deviate from one's course but the actual precaution called for in any particular situation is a practical question and depends on the facts of the particular situation....*" (Italics are my own).

In the instant case, the first defendant had not only turned "across the line of oncoming traffic" when he suddenly turned intending to go into a minor road, the first defendant had also failed to give any "conventional signal to deviate from" his course. On the other hand, the plaintiff, travelling on the main road, had no reason to suspect that the lorry was going to deviate from its course and so was justified to proceed on without altering his course. Thus, when the plaintiff collided into the lorry, it was the first defendant who was wholly to blame for the collision.

Judgment was entered for the plaintiff.

The plaintiff was immediately admitted to the Malacca General Hospital and medical examination disclosed —

1. A compound fracture at the lower end of the (R) tibia and fibula with a lacerated wound at the site of fracture. A piece of bone was seen protruding through the wound (4" long).
2. Superficial abrasions over the knees (both right and left) over the middle 3 knuckles of the left hand and over the (R) and (L) shoulder regions.

The plaintiff was discharged on July 28, 1972. However, the plaintiff was referred to the Orthopaedic Outpatient Department for further treatment and the plaintiff was given medical leave up to September 15, 1972.

On December 20, 1974, Doktor Pakar Perunding Otopidik expressed his findings as follows:

"The wounds on his Right hand and Right thigh have healed with slight scarring. He has a 5° flexion contracture of the 5th distal interphalangeal joint of the Right hand. He has 20° limitation of movement in the right knee. The Right leg is slightly bowed and there is a 30 c.m. operative scar on the right shin. The fracture itself has united satisfactorily. He has no dorsiflexion and 30° of plantarflexion in the Right ankle. The Right leg is 3 c.m. shorter than the Left. He is still dependent on crutches and he has a limp which is due to the shortening in the Right leg. X-rays taken show that union is taking place but insufficient for patient to bear weight fully. This is likely to be so for at least four months."

However, even on the day of trial some six years later, the plaintiff's right leg was unable to support the whole weight of his body. He walked with a limp.

Immediately before the accident, the plaintiff was employed by a timber company earning a fixed salary of $310 per month as the Chief Clerk. In addition he performed the work of a field supervisor for which he was paid a fixed allowance of $150 per month. According to the said employer, the plaintiff was on medical leave for 6 months but he was paid his full monthly salary of $310 per month. As a result of being absent from work for a period of 6 months, the plaintiff was not doing his work as field supervisor and lost an income of $150 per month. In fact even after resuming his employment with the company as the Chief Clerk he was unable to continue carrying out his work as field supervisor due to the injury sustained in the accident and this situation continued until the company was wound up in December 1974. In the circumstances, the court was satisfied that the plaintiff suffered a loss of income in consequence of the accident at the rate of $150 per month from the date of the accident till December 1974, a period of

30 months. The plaintiff claimed damages in the sum of $4,500 under item (c) of the "Particulars of Special Damages" in the statement of claim. Such claim was allowed by the court.

When the timber company was wound up, the plaintiff attempted to look for employment in a timber company but failed to find an employer who was willing to employ him. The plaintiff had to be satisfied being a free-lance Book-keeper earning about $200 per month. The court was of the view that even if the plaintiff were employed by a timber company after the former timber company was wound up, the plaintiff would not be able to perform the work of a field supervisor due to the injuries sustained by him in the accident. A field supervisor has to pay frequent visits to the concession area and has to walk on foot for considerable distances, which would not be possible for the plaintiff to do under his present condition. As such, the plaintiff had lost certain amenities which was available to him before the accident. The plaintiff's earning capacity was affected and it had caused, in the opinion of the court, a loss of income of $150 per month. At the date of the trial, the plaintiff was 43 years old. Bearing in mind the nature of employment the plaintiff was able to take, it was probable that he would still be able to carry out effectively the work of a chief clerk until he attained the age of 55 years. Allowing any unforseen contingencies the court allowed 10 years' purchase. It would be reasonable for the court to award general damages for partial loss of future earnings in a sum of $13,899.13 less income tax based on 10 years' purchase at $150 per month.

For pain and suffering and for loss of amenities, the court found it reasonable to award a sum of $5,000. For the shortening of 3 cm of the right leg, $20,000 was considered reasonable. Thus, a global sum of $25,000 at 6% interest from date of service of the writ till date of realisation was awarded as general damages.

The parties had agreed that the defendants shall pay the plaintiff a sum of $86 for fees in relation to the police report, sketch plan, medical report and so on.

The court was of the view that the taxi fare to and from Malacca General Hospital was about $20. It was reasonable for the members of the plaintiff's family to visit him while the plaintiff was hospitalised. According to the plaintiff, the family visited him sometimes twice a week. The court found that it was reasonable for the members of the family to have made 10 trips and so awarded a sum of $200 under this item. The plaintiff was treated as an outpatient at the Orthopaedic Outpatient Department of the General Hospital Malacca. The court was satisfied that the plaintiff made 18 trips for this purpose and awarded a sum of $360 under this item.

Costs were awarded to the plaintiff as may be taxed.

Order accordingly.

Solicitors: *A.L. Looi; Wong & Paramjothy.*

QBE INSURANCE LTD. v. HASHIM BIN ABDUL & ANOR.

[A.C.J. (Syed Agil Barakbah J.) October 30, 1980]
[Alor Star — Civil Appeal No. 6 of 1979]

Insurance — Road accident — Third Party Notice served on Insurance company — Application to remove Notice — Road Traffic Ordinance, 1958, s. 80(1).

Road Traffic — Third Party Notice Served on Insurance Company — Whether necessary — Road Traffic Ordinance, 1958, s. 80(1).

The appellants in this case were the successors of the Bankers and Traders Insurance Co. Ltd. The learned magistrate on April 3, 1978 granted leave to the second defendant in Civil Action No. 80 of 1978 to issue and serve a Third Party Notice on the appellants and for the latter to be added as such. The said Order was granted on an *ex parte* application.

In the civil action the two infant plaintiffs filed a writ suing through their father and next friend against the defendants claiming injuries sustained as a result of an accident involving a bicycle ridden by the plaintiffs and a motor van driven by the first defendant as agent of the second defendant, the Ketua Pengarah Pelajaran, State of Kedah. The appellants subsequently applied to set aside the Order but the application was dismissed by the learned Magistrate. They appealed against the whole of the said decision.

Held, allowing the appeal: (1) in construing sub-section (1) of section 80 the learned Magistrate failed to consider that the statutory liability of the insurance company to pay any claim made against the insured, i.e. the second defendant, commences when judgment in respect of such liability as is covered by the terms of the policy is given against the insured. Such judgment being a condition precedent, no liability can be attached to or imposed upon the insurers until and unless judgment has been obtained;

(2) in any case falling within the ambit of the provision of sub-section (1) of section 80, as the present case under appeal, payment by the insurers to the third party is guaranteed by the sub-section provided the other conditions stated therein are fulfilled. On this point alone there is no legal requirement to serve any Third Party Notice on the Insurance Company with a view to ensuring their statutory liability to indemnify the injured third party;

(3) the learned Magistrate had therefore erred in not setting aside the Third Party Notice.

Cases referred to:-

(1) *New Zealand Insurance Co. Ltd.* v. *Sinnadorai* [1969] 1 M.L.J. 183.
(2) *Harman* v. *Crilly* [1943] 1 K.B. 168.
(3) *Jones* v. *Birch Brothers Ltd.* [1933] 2 K.B. 597.
(4) *Scott* v. *Avery* 10 E.R. 1121.
(5) *Carpenter* v. *Ebblewhite & Ors.* [1939] 1 K.B. 347.

CIVIL APPEAL.

Danny Chandran for the appellants.

Josephine Premla Sivaretnam (Miss) (Federal Counsel) for the respondents.

Brijnandan Singh Bhar for the plaintiffs.

Syed Agil Barakbah J.: The appellants, the QBE Insurance Limited, are the successors of the Bankers and Traders Insurance Co. Ltd. on whom leave was granted by the Magistrate, Jitra on April 3, 1978 to the second defendant in Civil Action No. 80 of 1978, to issue and serve a Third Party Notice and for them to be added as such. The said Order was granted on an *ex parte* application. In the civil action the two infant plaintiffs filed a writ suing through their father and next friend, against the defendants claiming damages for injuries sustained as a result of an accident